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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MOTOR WORKS LLC,

Plaintiff,

vs.

SAFER TECHNOLOGIES, INC., CERMA
TECHNOLOGY, INC., GEORGE
ACKERMAN, MARY STRANAHAN,
NICHOLAS STREIT, TIM STREIT and
EDWARD HALBACH,

Defendants.

Case No.: 08-CV-03608 JW

**DEFENDANTS' OBJECTIONS TO
PLAINTIFF'S AMENDED BILL OF
COSTS**

Local Rule 54-2

Pursuant to Local Rule 54-2, defendants Safer Technologies, Inc., Cerma Technology, Inc., George Ackerson, Mary Stranahan, Nicholas Streit and Edward Halbach ("defendants") object to the following items of cost claimed by plaintiff:

1. Notice of Stipulation Regarding "Fees for Service of Summons and Subpoena"

The parties stipulate that the allowable, recoverable costs for this category are \$420.

[Declaration of Kristen E. Drake ("Drake Decl.") at ¶ 2.]

2. Objection to "Fees for Printed or Electronically Recorded Transcripts Necessarily Obtained For Use in The Case" in the Amount of \$3,161.50

Grounds:

In its July 26, 2010 Order, this Court denied plaintiff's claimed reporter's transcripts

1 costs. Yet, plaintiff is again requests these costs in its Amended Cost Bill. Such request is an
2 improper attempt at reconsideration of the court's order and should be denied.

3 As stated in defendants' original objections, Civil Local Rule 54-3(b) specifies the two
4 circumstances in which the cost of a reporters' transcript is recoverable: "(1) The cost of
5 transcripts necessarily obtained for an appeal is allowable; (2) The cost of a transcript of a
6 statement by a Judge from the bench which is to be reduced to a formal order prepared by counsel
7 is allowable;" and further provides that "(3) The cost of other transcripts is not normally
8 allowable unless, before it is incurred, it is approved by a Judge or stipulate to be recoverable by
9 counsel." As this Court previously ruled, none of these circumstances is applicable here. None
10 of the cases cited by plaintiff are Ninth Circuit cases and none apply Civil Local Rule 54-3(b).

11 In addition, defendants note that plaintiff's \$3,161.50 in transcript costs includes
12 expedited costs of \$1,610.00 and apparently daily costs of \$1,551.50. In comparison, defendants'
13 counsel obtained a transcript of the afternoon session of the third day of the trial for \$107.10.
14 [Drake Decl. at ¶ 3, Exhibit "A" thereto.] Regardless, plaintiff's claimed reporter's transcripts
15 costs are not authorized and should be denied.

16 **3. Objection to "Fees for Witnesses" in the Amount of \$3,732.80**

17 Defendants do not contest the \$40 per person attendance fees for Dea Shores, John
18 Sapherstein and Jeffrey Gonzales, or Mr. Gonzales' \$175.40 airfare or Mr. Sapherstein's \$5
19 airfare. Defendants do contest the remaining \$3,732.80 in witness fees.

20 Grounds:

21 **a) John Murray**

22 Defendants contest the \$1,973.00 in witness fees for John Murray as he is the plaintiff-
23 representative in this action. Parties may not recover witness fees for their own trial attendance.
24 *Barber v. Ruth* (7th Cir. 1993) 7 F.3d 636, 646; *Phillips v. Bartoo* (ND IL 1995) 161 FRD 352,
25 354. In this case, as plaintiff is an entity and can only appear through an individual
26 representative, Mr. Murray's "witness" fees should be disallowed.

27 Notwithstanding that recovery of witness fees for Mr. Murray would be inappropriate in
28 this case, plaintiff's calculation of witness fees directly contradicts its own attached receipts. For

example, plaintiff's counsel declares that "Mr. Murray incurred economy class airfare expenses of \$556.60 (1/3 of airfare Dallas to San Jose, as per attached Cheap Tickets confirmation)." [Weems Declaration at ¶ 10.] But, the attached receipt clearly states that the Cheap Tickets reservation includes "flights, 1 hotel reservation and car rental." [2nd, 4th and 5th pages attached to Weems Declaration and labeled with handwritten notation "p1 of 4."] Moreover, the "flights" are for 3 individuals: John Murray, Michael Shoars and Deanna Shoars. [3rd page attached to Weems Declaration and labeled with handwritten notation "p 2 of 4."] Mr. Shoars did not testify at the trial. Witness fees for Mr. Murray should be excluded in their entirety and the claimed lodging per diem of \$132*3 is contradictory to plaintiff's own evidence that the reservation included lodging.

b) Dea Shores

Defendants contest three days of witness fees for Ms. Shores when plaintiff could have had her testify earlier. Further, apparently, Ms. Shores made a 14-hour drive from Iowa to Texas in order to board a plane in Texas bound for San Jose, California. Plaintiff seeks reimbursement for 1,726 miles, totaling \$863. Defendants object to the mileage charge as driving 14 hours to board a plane is unreasonable. Defendants further object to the itemized airfare and lodging totals in Paragraph 17 of the Weems Declaration as the receipt provided clearly states that the Cheap Tickets reservation includes "flights, 1 hotel reservation and car rental." [2nd, 4th and 5th pages attached to Weems Declaration and labeled with handwritten notation "p1 of 4."] Moreover, the "flights" are for 3 individuals: John Murray, Michael Shoars and Deanna Shoars. [3rd page attached to Weems Declaration and labeled with handwritten notation "p 2 of 4."]

c) Jon Sapherstein

The actual cost of Mr. Sapherstein's ticket from Los Angeles was \$5.00 as he chose to use his frequent flier miles. 28 U.S.C. section 1821(c)(1) only allows recovery of "the actual expenses" incurred and "a receipt or other evidence of actual cost shall be furnished." The actual cost of the flight was \$5.00 and no additional monies should be awarded. Further, 28 U.S.C. section 1821(d)(1) provides for a subsistence allowance only "when an overnight stay is required at the place of attendance because such place is so far removed from the residence of such witness

as to prohibit return thereto from day to day.” Travel between southern California and northern California does not require an overnight stay and no receipt is provided. Thus, defendants object to any subsistence charges.

d) Jeffrey Gonzales

Mr. Gonzales flew from San Diego to San Jose. Again, as travel between southern California and northern California does not require an overnight stay and no receipt is provided, defendants object to any subsistence charges.

4. Objection to “Other Costs” in the Amount of \$560.20

Grounds:

Although plaintiff identifies the “other costs” as “airfare (DFW-SJO) Plaintiff Rep. Attend Court Ordered Mediation”, the \$560.20 actually includes “lodging per diem” and “meals per diem.” [Weems Declaration at ¶ 13, lines 23-27.] Nevertheless, 28 U.S.C. § 1821 only applies to witnesses and an individual participating in a mediation session is not a sworn witness. Costs in this category should be disallowed.

Dated: August 20, 2010

CRAIGIE, McCARTHY & CLOW

/s/ James M. Hanavan

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